THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.17645 of 2005

10.11.2005

Between:

1. Sri Chandamarai Balachandra, S/o.Munna Swamy Pillai

and another

… Petitioners

AND

1. The Mandal Revenue Officer, Tirupathi Urban Mandal

and others

… Respondents

ORDER:

The petitioners are residents of Mangalam village and claim to be the owners and pattadars of land admeasuring Acs.5.00 in survey No.33/2 of the said village. Alleging that the Mandal Revenue Officer, Revenue Divisional Officer and the District Collector, Chittoor (the respondents herein) are interfering with the petitioners' possession and enjoyment, they filed the present writ petition. They seek a declaration and direction to the respondents not to evict the petitioners from the said land.

In brief, the case of the petitioners is as follows. The petitioners are brothers and sons of one Munna swami Pillai. It appears that the land in Mangalam village is estate land belonging to Banguru Buchi Venkatacharulu, who allegedly granted saswatha patta in favour of the petitioners' grandfather Chandamarai Ramaiah Pillai on 10.4.1943. After the declaration of the said village as estate village under the provisions of A.P. (Andhra Area) Estates (Abolition & Conversion into Ryotwari) Act, 1948 (the Act, for short), the first petitioner filed an application before the Settlement Officer for grant of ryotwari patta, which was allegedly granted on 30.1.1983. It is alleged by the petitioners that the District Collector filed a revision petition before the Director of Settlements (DoS), Hyderabad and even while the same is pending, the Mandal Revenue Officer (MRO) tried to assign the land in favour of third parties. The first petitioner, therefore, filed W.P.No.11297 of 1993 before this Court, which was dismissed on 30.12.1996 directing the respondents not to dispossess the petitioner from the lands until the disposal of the revision petition before the DoS. The petitioners alleged that even while the revision before DoS is still pending, the MRO came to the land and tried to dispossess them. Therefore, the present writ petition is filed.

This Court, while directing the learned Assistant Government Pleader to get instructions in the matter, stayed the dispossession and ordered that the petitioners

shall not change or alter or create any third party charge over the land.

The MRO has filed a detailed counter affidavit. It is stated that Mangalam village was notified under the provisions of the Act and as the land in survey No.33 admeasuring Acs.13.05 is classified as Chennaiah Kunta Cheruvu, as per survey and settlement records. The same was treated as communal poramboke land falling under Section 3(16)(a) of Estates Land Act, 1908 (EL Act, for short). The allegation that the Settlement Officer, Nellore granted patta on 30.1.1983 is denied. It is stated that the Settlement Office, Nellore was disbanded and the records were sent to the Joint Collector, Chittoor, the present Settlement Officer, but the file bearing SR.No.128/11a/80 dated 30.1.1983 is not available in the files received from now defunct Settlement Officer, Nellore. There is no application made by the first petitioner for grant of patta in the files and the contention that the petitioners were granted patta on 30.1.1983 for an extent of Acs.5.00 in survey No.33/2 is not correct. The allegation that the District Collector filed revision petition against the orders of the Settlement Officer dated 30.1.1983 granting patta to the petitioner is denied. An averment is made to the effect that a ryotwari patta was granted under Section 11(a) of the Act in respect of land admeasuring Acs.12.50 in survey No.33 of Mangalam village to one P.Kuppuswamy vide SR.No.6/11(a)/86 dated 12.6.1985 and aggrieved by the same, the District Collector filed revision petition before the DoS being R.P.No.73 of 1987 and the same is pending but no revision as alleged, against the order dated 30.1.1983 is pending before the DoS. A fair adangal extract shows that the entire land in survey No.33 is classified as Chennaiah Kunta Cheruvu and therefore, the petitioners were never in possession of the land. Chennaiah Kunta Cheruvu, which includes the land claimed by the petitioners, is fully filled up with rainwater and petitioners are not in possession of the land. The petitioners have not filed any reply affidavit denying various counter averments.

Learned Counsel for the petitioners, Sri K.Bathi Reddy, strenuously contends that when the petitioners filed earlier W.P.No.11297 of 1993, the respondents made a submission to the effect that the District Collector filed a revision petition before the DoS against the patta granted to the petitioners and therefore, they cannot turn around and deny the patta granted to the petitioners. He placed a Xerox copy of the proceedings in SR. No.128/11(a)/80 dated 30.1.1983 allegedly issued by the Settlement Officer, Nellore granting patta in respect of Acs.5.00 of land to the first petitioner. Secondly, he would urge that the relevant adangals and other revenue records show the petitioners' father as pattadar and petitioners as occupiers of the land. He would further urge that the petitioners dug a borewell and obtained electricity connection No.167 and they are in possession of the property.

Learned Assistant Government Pleader for Revenue (General), Sri Surya Kiran, submits that the District Collector filed a revision under Section 5(a) of the Act against the patta granted to one Kuppuswamy and the same is still pending before the DoS. The District Collector never filed any revision petition against the alleged patta granted to the first petitioner and therefore, the observations made in the earlier writ petition would not in any manner help the petitioners. He has placed Xerox copies of fair adangals and contends that in the copy of the fair adangal obtained by MRO from the Office of the Settlement Officer, Nellore in January 2005 the land in

survey No.33 is classified as Chennaiah Kunta Cheruvu and in the copy of the fair adangal obtained in April 2005, the name of the first petitioner was interpolated. He also relied on a full Bench judgment of this Court in **P.Chenchulakshmma v. E.A.Tribunal** in support of the contention that in respect of the poramboke lands no ryotwari patta can be granted in view of Section 3(16) of EL Act.

As the learned Counsel for the petitioner placed strong reliance on the pleadings in the earlier W.P.No.11297 of 1993, this Court has called for the record from the registry pertaining to the said writ petition. The government or the respondents herein did not file any copy of revision petition said to have been filed by the District Collector before the DoS and the matter was disposed of at the admission stage. In their affidavit filed in the said writ petition, the first petitioner herein averred that the District Collector filed a revision petition against the patta granted to him and on that basis this Court disposed of the writ petition directing the MRO not to dispossess the petitioners till the disposal of the revision before the DoS. In fact, there was no such revision pending as on that date though admittedly the District Collector filed a revision petition against patta granted to one Kuppuswamy in June 1985.

A copy of the fair adangal produced before this Court would show that survey No.33 is classified as Chennaiah Kunta Cheruvu in which event no ryotwari patta can be granted in respect of the said land. As per Section 3(a) of the Act, all communal lands and porambokes, tanks and irrigation works, fisheries and ferries in an estate shall vest in the government and as per Section 3(16) of the Act, beds and bunds of tanks are not included within the definition of ryoti land. The Full Bench of this Court i n **P.Chenchulakshmma** (supra) considered the question whether ryotwari patta can be granted in respect of tank-bed lands under the provisions of the Act. On this question, the Full Bench held as under.

> Lanka Lands, lands of the description specified in Section 3(16)(a)(b) and (c) of the Estates Land Act, and forest lands are excluded from the purview of Section 13(b)(iii) of the Abolition Act and no ryotwari pattas could be granted to the landholder under that provision in respect of those lands. The mere non-user of the communal lands for the purposes for which they were intended and set apart, as on the date of the application of the Abolition Act to the estate is not material and does not alter their communal character, if, by the time the Abolition Act came to be applied to the estate in which they are situate, they were lands coming within the description specified in Section 3(16)(a)(b) and (c) of the Estates Land Act. Despite the disuse to which they have fallen and despite the other users they have been unauthorisedly and illegally put to they would nonetheless continue to be lands belonging to the category specified in Section 3(16)(a)(b) and (c) of the Estates Land Act in the absence of any order under Section 20-A(1)(b) of the Estates Land Act.

A Division Bench of this Court (to which I was a member) in **Director of Settlements v. Neerupaka Rama Krishna** considered Sections 11, 12 and 13 of the Act and held as under.

> Therefore, under the Act grant of patta under Section 11 is prohibited in respect of the land which is classified as grazing/poramboke land and land

which is not under cultivation. In the alleged patta order dated 27.5.1962 alleged to have been issued by the Settlement Officer a reference is made to poimosh adangals for Faslis 1339-45 is support of the contention that old patta land was in possession of the grandfather of the petitioner (Neerupaka Ramaiah). After perusing the record, it is not possible to say that there is any justification for issue of the order dated 27.5.1962.

A categorical averment is made that the petitioners are never in possession of the land in question, which is classified as Chennaiah Kunta Cheruvu. The petitioners have not chosen to file any affidavit denying the same. Therefore, the averment made by the respondents is deemed to have been admitted, in which event, there cannot be any patta for the land, which is classified as tank/tank-bed. The first respondent also stated that when the records from the Office of the Settlement Officer (Joint Collector), Nellore were transferred the file bearing SR.No.128/11a/80 dated 30.1.1983 is not found and no application allegedly made by the first petitioner for grant of patta is in the files. This averment is also not denied. When the respondents categorically stated that no patta was granted to the petitioners, this Court cannot give any credence to the submission of the petitioners that they were granted patta. The submission that an admission was made before this Court in the earlier writ petition is baseless and is not supported by any evidence.

In the result, for the above reasons, the writ petition fails and is accordingly dismissed. No costs.

_____

(**V.V.S.RAO,J**)

November 10, 2005.

YS